APPENDIX A

FINAL RULES

Part 54, Part 61, and Part 69 of the Code of Federal Regulations are amended as follows:

PART 54 – UNIVERSAL SERVICE

1 The authority citation continues to read as follows:

Authority 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2 Section 54.303(a) is revised by adding a second sentence as follows:

§ 54.303 Long Term Support

(a) * * * Beginning July 1, 2004, no carrier shall receive Long Term Support.

PART 61 – TARIFFS

3 The authority citation continues to read as follows

Authority Secs 1, 4(i), 4(j), 201-205, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201-205, and 403, unless otherwise noted.

4 Section 61.41 is revised by amending paragraphs (c) and (d) and adding a new paragraph (e) to read as follows.

§ 61.41 Price cap requirements generally.

* * *

(c) Except as provided in paragraph (e), the following rules in this paragraph (c) apply to telephone companies subject to price cap regulation, as that term is defined in § 61.3(ee), which are involved in mergers, acquisitions, or similar transactions

* * *

(d) Except as provided in paragraph (e), local exchange carriers that become subject to price cap regulation as that term is defined in § 61.3(ee) shall not be eligible to withdraw from such regulation.

(e) Notwithstanding the requirements of paragraphs (c) and (d), a telephone company subject to rate-of-return regulation may return lines acquired from a telephone company subject to price cap regulation to rate-of-return regulation, provided that the acquired lines will not be subject to average schedule settlements, and provided further that the telephone company subject to rate-of-return regulation may not for five years elect price cap regulation for itself, or by any means cause the acquired lines to become subject to price cap regulation

PART 69 – ACCESS CHARGES

5 The authority citation continues to read as follows:

Authority 47 U S C 154, 201, 202, 203, 205, 218, 220, 254, 403

6 Section 69 123 is revised by amending paragraphs (a), (c), and (d) to read as follows:

§ 69.123 Density pricing zones for special access and switched transport.

(a)(1) Incumbent local exchange carriers not subject to price cap regulation may establish any number of density zones within a study area that is used for purposes of jurisdictional separations, provided that each zone, except the highest-cost zone, accounts for at least 15 percent of that carrier's special access and transport revenues within that study area, calculated pursuant to the methodology set forth in § 69.725

(2) [Reserved]

* * *

(c) Notwithstanding § 69.3(e)(7) of this chapter, in study areas in which a telephone company offers a cross-connect, as described in § 69 121(a)(1) of this chapter, for the transmission of interstate special access traffic, telephone companies may charge rates for special access sub-elements of DS1, DS3, and such other special access services as the Commission may designate, that differ depending on the zone in which the service is offered, provided that the charges for any such service shall not be deaveraged within any such zone.

* * *

(d) Notwithstanding § 69.3(e)(7) of this chapter, in study areas in which a telephone company offers a cross-connect, as described in § 69.121(a)(1) of this chapter, for the transmission of interstate switched traffic, or is using collocated facilities to interconnect with telephone company interstate switched transport services, telephone companies may charge rates for sub-elements of direct-trunked transport, tandem-switched transport, entrance facilities, and dedicated signaling transport that differ depending on the zone in which the service is offered, provided that the charge for any such service shall not be deaveraged within any such zone.

* * *

APPENDIX B

PLEADINGS FILED IN RESPONSE TO *MAG FURTHER NOTICE*

COMMENTS ON MAG FURTHER NOTICE

1 ALLTEL Communications, Inc , CenturyTel, Inc , Madison River Communications, LLC, and TDS Telecommunications Corporation (ALLTEL et al)
2 AT&T Corp
3 CUSC
4 General Communication, Inc (GCI)
5 General Services Administration (GSA) (filed 12/31/01)
6 GVNW Consulting, Inc. (GVNW)
7 ICORE Cos (ICORE)
8 Independent Telephone & Telecommunications Alliance (ITTA)
9 Innovative Telephone
10 Nebraska Rural Independent Cos
11 NECA
12 NRTA, OPASTCO and USTA
13 NTCA
14 PRTC
15 Ronan Telephone Co and Hot Springs Telephone Co
16 Sprint Corp
17 TCA, Inc
18 Verizon
19 Western Alliance
20 Worldcom

PARTIES FILING REPLY COMMENTS TO MAG FURTHER NOTICE

1 ALLTEL et al
2 AT&T Corp.
3 GCI
4 GSA
5 GVNW
6 ITTA
7 Innovative Telephone
8 NECA
9. NRTA, OPASTCO and USTA
10 NTCA
11 Valor Telecommunications Enterprises, LLC

APPENDIX C

CENTURYTEL, INC. ALTERNATIVE REGULATION PROPOSAL
(From Ex Parte in CC Docket No. 00-256, filed Dec. 23, 2002)

The FCC Should Permit Rate-of-Return Carriers to Elect Price Cap Regulation for Interstate Access Charges on a Study Area Basis and Eliminate the "All-or-Nothing" Rules

I. Background – Why CenturyTel Needs Relief From the All-or-Nothing Rules

- All-or-Nothing relief is needed for both acquisitions and legacy properties
- There is no clear path for CenturyTel's operating companies to adopt price caps or other forms of incentive regulation under the current rules
- The lack of options hinders CenturyTel's ability to attract capital for investment (*e g* , for the deployment of new technologies and acquisition of new lines)
- The need for waivers also adds to the cost, delay and uncertainty of acquiring rural lines from price cap carriers, despite the fact that waivers are routinely granted
- CenturyTel needs options to remain a viable rural provider, to continue investing in rural markets, and to respond to competitive service offerings
- CenturyTel could successfully operate under price caps, and access customers could benefit from lower traffic-sensitive rates, in some of CenturyTel's larger and more homogeneous markets

II. Specific rule changes should accomplish the following:

- Enable acquisitions: Eliminate §61 41(c)(2) so rate-of-return companies who acquire price capped exchanges need not convert to price caps at the holding company level (§61 41.(c)(3) also may be eliminated as it will become moot)
- Give flexibility for rate-of-return carriers to elect price cap regulation on a study area basis: Eliminate §61.41(b) so price cap tariffs may be filed for some study areas without necessitating that all study areas be brought under price caps
- Benefit access customers by lowering traffic-sensitive charges in electing study areas to the Target Rates. Most rate-of-return companies have cost-based interstate traffic-sensitive access charges above $0.015 per minute; therefore, enabling the adoption of price caps will produce an immediate benefit to access customers by bringing down traffic-sensitive rates.

- Provide alternatives for carriers whose actual traffic-sensitive rates are significantly above the Target Rates for average traffic-sensitive (ATS) charges:
  - Amend §61 3(qq) to establish the following ATS Target Rates:
    - $0 0125 for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) less than 15 lines per square mile and current ATS rates at or above this Target Rate,
    - Freeze ATS rates at current levels for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) less than 15 lines per square mile and current ATS rates below $0 0125,
    - $0 0095 for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) of at least 15 but less than 19 lines per square mile and current ATS rates at or above this Target Rate,
    - Freeze ATS rates at current levels for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) of at least 15 but less than 19 lines per square mile and current ATS rates below $0 0095;
    - Freeze ATS rates at current levels, up to a maximum ATS rate of $0.0095, for carriers with line density average (at the holding company level, excluding lines acquired from mandatory price cap companies) of 19 lines or more per square mile, for carriers newly electing price caps
  - Amend §61.45(b)(1)(ii) so *"X" = GDP-PI* effective immediately for carriers electing this plan
- Ensure against harm to consumers by preserving federal universal service support·
  - *Avoid "revenue shock" when ATS rates are reduced by creating a "TS Additive" to an electing carrier's interstate support* Amend §54.901 to permit electing carriers to move their ATS rates to the new Target Rate (described above) on a revenue-neutral basis; where an electing carrier's existing ATS rate is above the Target Rate, allow such carrier to recover the difference between the Target Rate and their existing revenue requirement through a *"TS Additive"* to ICLS; then freeze the TS Additive on a study area basis for the duration of the plan
  - *Maintain existing levels of Interstate Common Line Support (ICLS) and Long-Term Support (LTS) for the duration of the plan* Amend §54.901(a) to include carriers electing price caps after the effective date of this plan in addition to "rate-of-return carriers", freeze for the duration of the plan, on a per-line basis, both ICLS and LTS at existing levels (with a possible adjustment to ICLS for a non-primary residential line SLC increase to $7.00 upon conversion to price caps); also amend §54.902 to

clarify that ICLS (frozen on a per-line basis as described above) will follow the transferred exchanges where the buyer is a carrier electing price caps under this plan, in addition, amend §54 303(a) to clarify that LTS will continue to be made available to LECs who elect price caps under this plan

- *Maintain existing levels of Local Switching Support (LSS) for the duration of the plan* Amend §54 301(a) to freeze LSS on a study area basis for the duration of the plan

- *Avoid any impact on the fixed \$650 million fund of interstate CALLS support.* Amend §54 800 to redefine Price Cap LEC for the purpose of Subpart J of Part 54 as excluding carriers that elect price caps under this later plan

- *Create predictable and stable High-Cost Loop Support (HCLS)* Amend §36.631 to freeze HCLS on a per-line basis Amend §36 603 to adjust this frozen per-line amount only for GDP-CPI, while continuing to apply the Rural Growth Factor to that portion of the fund that supports other rural carriers All rural carriers remain eligible to receive safety net and safety valve support

- Retain the low-end adjustment to ensure a reasonable earnings opportunity: Retain the existing rule that price cap carriers who earn below 10 25% may increase their Price Cap Indices effective July 1 the following year to target an interstate earnings level of 10.25%

- Grant flexibility to pooling carriers Amend §69 3(e)(9) by deleting the second sentence, so carriers may exit the pool to elect price caps for some study areas but keep others (under rate-of-return regulation) in the pool

- Ensure stability by putting the plan in place for 5 years

III. Public Benefits of This All-or-Nothing Relief:

- TS charges for interstate access will be stabilized: Pursuant to § 61.3(qq)(2), CenturyTel companies would qualify for the \$0.0125 Target Rate based on line density of fewer than 15 lines per square mile at the holding company level (excluding lines acquired from mandatory price cap companies); CenturyTel's current composite ATS rate is well above \$0 015 in most study areas, and costs per line are increasing; thus, access customers will benefit from lower and stable interstate TS rates if CenturyTel is permitted to adopt price caps under this plan

- High-Cost Loop Support will be stabilized: A freeze will increase the predictability and stability of HCLS, creating a climate that is favorable for long-term capital planning and fostering new investment

- Investment will be encouraged: High-risk investment in new technologies in rural areas will be encouraged by the prospect of higher earnings; and new acquisitions will become less costly and disruptive to consummate because the all-or-nothing waiver process will have been eliminated (although consumers and the Commission still will have the opportunity to review study area boundary changes and tariff filings, and will have notice of the change in service provider under the Section 214 and "slamming" notification rules)

- Consumers will get the benefits of price caps without the loss in service quality experienced in areas served by the mandatory price cap carriers:

  - Unlike the mandatory price cap carriers, CenturyTel serves relatively small study areas that are predominantly rural in nature, CenturyTel's reputation rests on the quality of its service to rural customers

  - Unlike the mandatory price cap carriers, CenturyTel will be an elective price cap carrier, and will not elect price caps for study areas where it can only successfully operate by curtailing investment in high-cost areas

  - Unlike the mandatory price cap carriers, CenturyTel would be electing price caps at a time when the states have had years of experience under their own (intrastate) price cap plans, the states are fully prepared to (and actively do) police LEC service quality and infrastructure investment – many smaller ILECs, including many CenturyTel operating companies, are governed by incentive regulation today for their intrastate rates

  - Unlike the mandatory price cap carriers, CenturyTel is as efficient an operator as any carrier operating comparable exchanges, and seeks to sustain that efficiency without jeopardizing service quality or reliability, while CenturyTel does not expect to experience the same efficiency gains under price caps as the larger carriers did, CenturyTel's future lies not in diminishing service to rural America, but in providing the best quality service, offering innovations that respond to customer needs, and providing, maintaining and upgrading a network capable of supporting vertical services

IV. All-or-Nothing Relief Does Not Require Additional Safeguards:

- Customers are adequately protected by the existing accounting rules and affiliate transactions rules

- The Commission and customers can detect cost-shifting in tariff filings

- State Commissions continue to review carriers' costs as well

- The FCC may order the production of records at any time

- The Commission may continue to enforce its "one-way door" rules so carriers may not "game the system" by shifting back and forth between price caps and rate-of-return regulation over the life of the plan

V. The Commission Should Adopt All-or-Nothing Relief in Time for 2003 Adoption

- The Commission should adopt and release these rule changes by May 31, 2003, to give carriers adequate opportunity to decide whether to elect this plan

- The Commission should adopt a 5-year plan, under which carriers may elect to designate individual study areas beginning in June 2003, effective July 1, 2003, carriers also should be permitted to designate study areas for this plan at any subsequent annual or semi-annual tariff filing – *e g* . December 2003, June 2004, December 2004, June 2005, etc.; finally, the Commission should make adoption of the plan as to any study area effective for the remainder of the 5-year life of the plan

APPENDIX D

RATE-OF-RETURN COMPANY TARIFF OPTION PROPOSAL
(From Ex Parte in CC Docket No. 00-256, filed Jan. 31, 2003)

Proposal Developed Collectively By:
ALLTEL Communications, Inc.
Madison River Communications, LLC
TDS TELECOM, Inc.

I. <u>INTRODUCTION</u>: The Rate-of-Return Company Tariff Option is responsive to a need that the Commission has identified. Implementation of the proposed option will address concerns of the non-price cap rate of return carriers. Adoption of this proposal will serve the interests of access users and end user customers of rate of return carriers, and also foster the provision of universal and advanced services in rural areas.

- In response to the Commission's Further Notice of Proposed Rulemaking set forth in the Commission's Order released November 8, 2001 in CC Docket No 00-256, ALLTEL Communications, Inc , Madison River Communications, LLC, and TDS TELECOM, Inc. (collectively, "the Carriers") have given both independent and collective consideration to the development of options available as alternative regulatory structures for rate-of-return carriers that currently have no meaningful options

    - Specifically, rate-of-return carriers, including the Carriers, have no realistic alternative or incentive option available to rate-of-return regulation

        - Given the cost characteristics of the rural geographic areas served by the Carriers, it is not practicable for these companies to elect Price Caps as currently formulated

        - Under existing rules, the Carriers are not permitted to elect the use of the incentive regulation established in § 61.39 of the Commission's Rules to address the needs of their companies, their access users, and their end user customers.

    - The Commission has long recognized that the distinct characteristics of companies that have remained on traditional rate-of-return regulation; the general rural nature of their service areas in combination with their diversity result in the conclusion that it is appropriate to establish "a continuum of increasingly incentive-based approaches which permits a company to select a plan best fitting its circumstances "[1]

    - The Commission initially attempted to achieve this continuum by adopting Price Caps for larger carriers; "Optional Incentive Regulation" ("OIR") for all rate-of-return local exchange carriers as formerly set forth in § 61.50 of the Commission's

[1] *In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation*, CC Docket No 92-135, Report and Order released June 11, 1993 (the "<u>OIR Order</u>"), para 4

Rules, and historic cost tariff filing rules for both the traffic sensitive and common line rates for companies serving fewer than 50,000 lines, as set forth in § 61.39 of the Commission's Rules.[2]

- o Unfortunately, the continuum envisioned and desired by the Commission does not exist The OIR rules did not turn out to be as useful to the rural rate-of-return carriers as both the carriers and the Commission had hoped. The availability of OIR was subsequently removed from the Commission's Rules

- The need for the continuum of incentive regulation choice envisioned by the Commission, however, remains. The Carriers have concluded that the Commission's existing rules and policies, with appropriate modification and application, contain the needed elements to provide the desired continuum for the Carriers and other similarly situated companies that have no incentive regulation choice other than the existing price-cap plan which the Commission has recognized and understands to be inapplicable to their service areas [3]

- Specifically, the Carriers propose that the Commission adopt the "Rate-of-Return Company Tariff Option" by revising its rules to permit all rate-of-return telephone companies the option in each of their study areas of electing to utilize the § 61.39 rules to establish applicable access charges

  - o The Commission has previously noted the public interest benefits that have been produced by utilization of the § 61 39 rules,[4] and recognized that the rules exist both to promote the public interest and to provide incentives to local exchange carriers.[5]

  - o The Commission has essentially recognized in its Further Notice in the MAG proceeding, as it has previously determined, that it is appropriate and necessary to expand incentives for efficiency and innovation

  - o The limitation on the application of § 61 39 Rules to carriers serving fewer than 50,000 access lines was established in 1987.

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[2] The optional application of § 61 39 to the common line rate was effectuated by the OIR Order, and reflects the Commission's intent to enhance the provision of a continuum of incentive choices to non-price cap carriers.

[3] *See, e g*, MAG Order, para 86 "Rate-of-return carriers also have fewer opportunities than large price cap carriers to achieve cost savings because of their limited size, their lumpy investment patterns, and fluctuating operating expenses."

[4] "Our own review of the rates filed pursuant to Section 61 39 . demonstrates the success of these rules " OIR Order, para 94

[5] "Collectively, these revisions to our rules governing small and mid-size LECs were designed to assure reasonable rates, reduce regulatory burdens and introduce (or expand) incentives for efficiency and innovation." *In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation*, Order on Reconsideration, February 18, 1997, at para 11

  - Prior to any experience with price caps or any alternative forms of incentive regulation,[6]
  - Prior to any experience in observing the value of the § 61 39 rules for rural rate-of-return carriers,
  - Prior to the failure of OIR to provide a viable alternative for carriers similarly situated to the Carriers, and

- The Carriers note that the Commission has previously been asked to consider expanding the availability of the § 61 39 rules A similar proposal was set forth by USTA in the course of the Commission's 1998 Biennial Review. In response, the Commission declined to adopt the proposal noting that this, and related access pricing flexibility proposals, would be better addressed in the *Access Reform* proceeding.

- Accordingly, it is appropriate for the Commission to consider and adopt the Carriers' proposal to expand the availability of the § 61 39 rules to all rate-of-return telephone companies. As the Commission's experience with the § 61.39 rules has demonstrated, the adoption of the Rate-of-Return Company Tariff Option will serve the public interest by providing a currently unavailable option to the Carriers and similarly situated rate-of-return telephone companies Implementation of the Rate-of-Return Company Tariff Option will promote:
  - Reasonable access rates,
  - Reduced regulatory burden;
  - Potential for reduced end user charges

II. The minimal Rule changes required to implement the Rate-of-Return Company Tariff Option are consistent with both Commission policy and the Telecommunications Act of 1996.

- The availability of the § 61 39 Rules is currently limited to local exchange carriers serving 50,000 or fewer access line in a given study area that are described as subset 3 carriers in § 69.602 (i e., annual operating revenues under $40 million)

- The Rate-of-Return Company Tariff Option may be implemented by substituting the following at the beginning of § 61.39·

[6] In establishing the limitation the Commission noted that it was considering forms of alternative or reduced regulation in separate proceedings

§ 61 39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, with respect to any study area operated by a Telephone Company otherwise subject to § 61 38

(a) *Scope* This section provides for an optional method for filing for any study area served by a carrier that is otherwise subject to § 61 38.

- A similar revision is required in § 61 38 to replace the reference to the 50,000 line and subset 3 limitation with respect to the application of § 61 39

III. Additional proposed modifications to the Commission's Rules will align the operation of § 61.39 with the implementation of the MAG decision.

- The Carriers propose no changes to the Traffic Sensitive portion of the § 61.39 tariff option Under existing rules, carriers filing Traffic Sensitive rates under § 61 39 base their rates on historical costs and demand For the initial § 61.39 tariff filing, a carrier uses actual costs and demand for the previous calendar year For subsequent filings, the carrier uses the actual costs and demand for the two previous calendar years § 61.39 uses regulatory lag to provide an incentive to the ILEC to control costs and stimulate demand, while the customers benefit from the self-correcting nature of the plan. Efficiencies gained during the tariff period are reflected in subsequent tariff filings.

- In their review of the § 61 39 rules, the Carriers noted that the implementation of the MAG Order affects the operation of § 61 39 with respect to the common line option.

  - Under the existing § 61 39 rules, end user charges are set at the lower of cost or subscriber line charge ("SLC") caps, and the remainder of the common line revenue requirement is to be recovered through the CCL charge. The MAG rules, however, have eliminated CCL charges except for the small amount remaining for the final SLC cap transition, ICLS has been created to recover the residual

  - Accordingly, the § 61.39 rules should be revised to enable the electing company to recover the residual Common Line revenue requirement through the ICLS, consistent with the changes in the MAG order.

  - The Carriers offer a procedure below to accomplish this in a manner consistent with the underlying policy intent of the Commission when it expanded the § 61.39 option to include the CCL rate

  - In the current environment of stagnant line growth, rural rate-of-return carriers should be provided with expanded and additional incentives to control costs. The Carriers have developed a proposed mechanism to revise § 61.39 in a manner that both provides that incentive, and benefits the customers by resetting support every two years based on efficiency gains of the previous two-year period.

- Specifically, the Carriers propose to revise § 61.39 with respect to the establishment of the CCL rate (and to make consistent rule changes in § 54 and § 69 of the Commission's Rules) to provide as follows

  - Establish per-line Common Line support at the historical level of costs divided by the historical level of access lines.

  - The formula would initially be established by utilizing the historical period interstate Common Line revenue requirement, as defined in the FCC Part 69 rules, which includes the Line Port costs transferred from Local Switching and TIC reallocations

  - The Interstate Common Line revenue requirement for the historical period would be reduced by end user revenues, the special access surcharge, the line port costs associated with ISDN service in excess of basic analog service,[7] and payments to USAC for universal service funding assessments.

  - No reduction is required to offset CCL revenue; this result occurs because this plan will not be implemented until after the CCL charge is completely eliminated on June 30, 2003

  - A company electing § 61 39 for Common Line would establish an interstate Common Line revenue requirement per access line, net of SLCs, special access surcharges, ISDN Port charges, and USAC assessments This per line amount, times the actual access lines, would become the company's Common Line revenue requirement during the optional tariff period and would be used as a final total amount for all interstate Common Line amounts

  - Under this proposed mechanism for addressing the common line revenue requirement within the framework of § 61.39, an electing company would receive Common Line revenue for the applicable study area from the following sources for the duration of the tariff period:

Common Line Revenue Source	*Determination of Amount*
Subscriber Line Charges	Based on historical year costs, with rate development consistent with current SLC rules, using SLC caps in the rules.
Per-Line Common Line Settlement Amount	Historic year costs, adjusted for SLCs, special access surcharges, and ISDN port charges.
Special Access Surcharges	Based on historical period rate development.
ISDN Line Port Charges	Based on historical period rate development.
Universal Service Charges (FUSC)	Recovery based on current period assessments from USAC.

[7] *See* § 69 130 of the Commission's Rules

IV. Public Interest Benefits Result from the Implementation of the Rate-of-Return Company Tariff Option.

- The adoption of the Rate-of-Return Company Tariff Option will expand the availability of a proven incentive regulation alternative to study areas served by all current rate-of-return telephone companies In their consideration of § 61.39 as an expanded option available as part of a continuum of incentive options, the Carriers offer a mechanism to ensure that Common Line revenue requirement recovery continues to be achieved in a manner consistent with the Commission's goals The adoption of the proposal otherwise is limited in its impact on existing mechanisms

  - Local Switching Support The Carriers' proposal does not contemplate or require changes to the methodology by which Local Switching Support (LSS) is calculated and recovered. This element will continue to be paid based on estimated costs for the year, subject to true-up Accordingly, the proposal has no impact on the manner in which LSS is treated under the existing rules.

  - High Cost Loop Funding The Rate-of-Return Company proposal does not contemplate or require any changes to the High Cost Loop Funding (HCLF) The Carriers respectfully submit that any current or subsequent consideration by the Commission regarding HCLF should be separate and apart from the consideration of this proposal. Consideration of any issues or proposals regarding HCLF should not be permitted to delay the expedited adoption of the Rate-of-Return Company Tariff Option and the resulting benefits of expanding the availability of § 61.39 to all rural companies

  - NECA Pooling and Incentive Regulation The Carriers anticipate that the Rate-of-Return Company Tariff Option will work well with the NECA pooling process.

    - Companies electing § 61 39 incentive regulation for Traffic Sensitive rates would settle with the Pool based on per-minute or per special access line settlement ratios

    - No administrative burden will result for companies electing the Rate-of-Return Company Tariff Option for Common Line. Participation in the NECA Common Line pool would be administratively simple; these companies would simply settle with NECA based on the per-line settlement amounts (as proposed in Section III above)

- The adoption of the Rate-of-Return Carrier Tariff Option will not be disruptive to other existing policies, practices or procedures:

  - All Rate-of-Return Telephone Companies would be able to elect to apply § 61.39 rules to Traffic Sensitive, Common Line, or both, by study area in the same manner that a more limited subset of rural telephone companies are able to do today.

  - As under the existing § 61.39 rules, the resetting of rates every two years will provide both protection to the electing telephone companies and benefits to IXCs.

- In the MAG proceeding, the Commission acknowledged the concerns of rural telephone companies with respect to any prospective mandated incentive regulation The Rate-of-Return Carrier proposal is optional for all rural non-price cap companies and will not impact any rural telephone company in a negative manner The adoption of the Rate-of-Return Company Tariff Option does not and should not impose any additional regulation or administrative burden on rural companies currently eligible to utilize § 61 39

- The Rate-of-Return Carrier Tariff Option provides an incentive tariff filing option for many Rate-of-Return Company study areas that currently have no viable incentive option The proposed option is founded on existing rules and polices and results, as the Commission has contemplated, in the expansion of a continuum of incentives available to non-price cap carriers

- The Rate-of-Return Carrier Tariff Option can be easily adopted and implemented without administrative burden to any party The proposed rule changes to expand the application of § 61 39 are very straight-forward The remainder of the rule changes proposed by the Carriers address changes in an efficient manner consistent with existing policy to align § 61 39 with the changes in CCL revenue requirement recovery that result from the implementation of the MAG Order

V. The Commission Can Obtain Maximum Public Interest Value from the Rate-of-Return Company Tariff Option by Expedited Adoption that Enables Carriers to Elect to Use the Option Effective July 1, 2003.

- The Carriers respectfully request that the Commission afford the Rate-of-Return Company Tariff Option expedient consideration in order to ensure that the required rule changes are effective on a timely basis that enables rural telephone companies the opportunity to elect to implement this plan concurrent with the election for interstate tariffs effective July 1, 2003

VI. CONCLUSION

- Adoption of the Rate-of-Return Company Tariff Option will expand the availability of a successful incentive plan that has proven to address the needs of rural telephone companies in a manner that advances the public interest. The expansion of the availability of § 61 39 provides a missing element on the Commission's intended continuum of incentive regulation alternative designed to encourage efficiencies and reasonable rates for both access customers and end user customers

- For an electing company, § 61.39 provides a strong incentive to operate efficiently during the tariff plan. As an incentive, the Rate-of-Return Company is able to keep any additional revenues earned while under incentive regulation As a result of the gain in efficiencies, the access customer benefits. Rate reductions are reflected at the end of the first tariff period when the carrier files new rates based on the two-year period since it last filed rates. End users will benefit from § 61 39 filings through lower SLC rates and/or lower universal service funding requirements

- When the electing company files its new rates under § 61.39, the company uses the two-year historical period, costs and demand, to establish its rates for the next tariff period. As a result, its operating efficiencies during the initial tariff period translate into lower rates to carriers during the second tariff period. This result provides a powerful incentive to continue to operate more efficiently The Carriers respectfully submit that the public interest will be well served if this strong and successful incentive currently available to some rural telephone companies is made available to all incumbent local exchange carriers that are not required to utilize price caps by the Commission's expedient adoption of the Rate-of-Return Company Tariff Option

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking

I support today's decision to update and refine aspects of the MAG access reform plan for rate-of-return carriers The measured step we take in adjusting the all-or-nothing rule is the right one On the one hand, the all-or-nothing rule reflects a legitimate concern with improper cost shifting between rate-of-return and price cap companies On the other, the rule may deter small and rural carriers interested in acquiring lines from price cap carriers and then investing in and improving their facilities Our approach here—permitting rate-of-return carriers to convert acquired price cap lines back to rate-of-return regulation—strikes the appropriate balance.

When the MAG plan was adopted, I expressed concern about the abridged process leading to our consideration Although we are well down the road already, I still have concerns about the impact of this plan on rural consumers We have a duty to ensure that all Americans have access to reasonably comparable services at reasonably comparable rates I urge the Commission to monitor the impact of this plan to ensure that it provides the stability necessary for investment in rural America

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking

I am pleased that we are modifying the all-or-nothing rule to permit a rate-of-return carrier that has acquired price cap lines through a merger or acquisition to convert the acquired price cap lines back to rate-of-return regulation without obtaining a waiver. This modification will help reduce the administrative burdens associated with these mergers and acquisitions, and ensure that these unnecessary costs do not discourage participation by interested parties. Moreover, acquiring carriers can funnel those administrative costs into their new networks, thereby fueling network development

Pricing flexibility is critical to incumbent companies as they face competitive entry in their service areas. Permitting rate of return carriers to deaverage their rates geographically for transport and special access services and to define both the scope and number of zones, pursuant to certain qualifications, will better equip these carriers to compete on a more level playing field with the new entrants that are not bound by the same regulatory requirements

I look forward to discussion in response to the NPRM regarding the alternative regulation proposals and that regarding further relief under the all-or-nothing rule to build upon the decision we've made today